

REMARKS

1. Preliminary Remarks

a. Status of Claims

Claims 69-72, 89, 92, 93, and 96 were pending and examined in the Office Action. Claims 69, 89 and 96 are amended. Claims 70-72 and 92-93 are canceled. Claim 97 is new. Applicant respectfully requests entry of the amendments and remarks made herein into the file history of this application. Upon entry of the amendments, claims 69, 89 and 96-97 will be pending and under active consideration.

b. Amendment to the Claims

In order to expedite prosecution and without prejudice to seeking claims of similar scope in a continuing application, Applicant has canceled claims 70-72 and 92-93 without prejudice. Furthermore, claims 69 and 89 have been amended to limit the scope of the claimed nucleic acids to subject matter recognized by the Examiner as being supported by the application as originally filed. Part (b) of claims 69 and 89 have also been amended to be a DNA encoded by SEQ ID NO: 140670 or 140732 (claim 69); or SEQ ID NO: 2 or 9 as these sequences are RNA in the sequence listing. Support for DNA can be found in paragraph 0039 of the specification.

Claim 96 has been amended to remove dependency from canceled claims.

New claim 97 is directed to a probe comprising a heterologous sequence, wherein the heterologous sequence consists of the sequence of the nucleic acid of claims 69 or 89. Support for new claim 97 can be found throughout the specification, for example, paragraph 0039.

Probes are well known to be useful for purpose including the hybridization and detection of a nucleic acid of interest. Hybridization is typically accomplished by using a sequence that is sufficiently complementary to the target sequence. The hybridization sequence is considered to be "heterologous" with respect to the basic construct of a probe useful for detection. The above provided passage clearly shows that a probe is contemplated that includes a hybridization sequence, such as the subject matter of claim 97. One of ordinary skill in the art would recognized that features other than the heterologous sequence would be necessary for identifying whether the probe bound to a complementary sequence.

2. Patentability Remarks

a. 35 USC § 112, first paragraph

On pages 2-6 of the Office Action, the Examiner newly rejects claims 69-72, 89, 92 and 93 under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement, lack of enablement and/or inadequate description in the specification.

In order to expedite prosecution, claims 69 and 89 have been amended, as described above, to limit the scope of the claimed nucleic acids to subject matter recognized by the Examiner as being

supported by the application as originally filed. Furthermore, the Examiner has recognized the claimed subject matter as being enabled and adequately described in the specification. As discussed above, claims 70-72, 92 and 93 have been canceled without prejudice. In view of the foregoing amendment and remarks, Applicant respectfully requests that the rejections under 35 U.S.C. §112 be withdrawn.

3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification of to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

POLSINELLI SHUGHART PC

Dated: July 17, 2009

On behalf of: Teddy C. Scott, Jr., Ph.D.
Registration No. 53,573

By: /Paul A. Jenny/
Paul A. Jenny
Registration No. 59014
Customer No. 27148

POLSINELLI SHUGHART PC
180 N. Stetson Ave., Suite 4525
Chicago, IL 60601
312.819.1900 (main)
312.873.2913 (E-fax)
312.873.2913 (direct)